

DO WE HAVE RIGHT TO WATCH PORNOGRAPHY?

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Introduction:

Recent direction from the Department of Telecommunications of Ministry of Telecommunication of India and the PIL filed by the petition filed by advocate Kamlesh Vashwani to block porn websites in India has lead to series of debates emphasizing on Right to Privacy. While some are of the view that Government has no right to stop people from doing anything inside their homes or on their beds like watching pornography, others respected this move of the Government by stating different versions of beneficial aspects of the direction. The author aims to achieve dual objective. Firstly, to study legal perspective of of blocking porn websites, by considering various provisions of Constitution of India and Information Technology Act, 2000, and judicial precedents. Secondly, to analyze the PIL (Public Interest Litigation) petition filed before the Supreme Court in 2013 seeking a complete ban on porn websites.

Indian Judiciary on Right to Privacy:

Article 21 of the Constitution of India provides that:

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Indian Judiciary has widened the scope of Article 21 through series of judgments. The Supreme Court of India, in case of *Kharak Singh v. State of U.P. and Others*.²⁶⁸ interpreted Article 21 in following words “ Article 21 is comprehensive to include all varieties of rights which go to make up the personal liberty of a man other than those dealt with in Article 19(1)(d). While Article 19(1)(d) deals with the particular types of personal freedom, Article 21 takes in and deals with the residue.” One such residual right is right to privacy.

In *Govind v. State of Madhya Pradesh*²⁶⁹, while considering the question whether Right to Privacy is a fundamental right under Article 21, Supreme Court expressed its view on privacy in following

²⁶⁸ AIR 1963 SC 1295.

²⁶⁹ AIR 1975 SC 1378.

words “that possible theory for protecting privacy is that individuals need a place of sanctuary where they can be free from societal control. The importance of such a sanctuary is that individuals can drop the mask, desist for a while from projecting on the world the image they want to be accepted as themselves, an image that may reflect the values of their peers rather than the realities of their natures.”²⁷⁰

Further, in *People's Union for Civil Liberties v. Union of India*²⁷¹, the apex court laid down the rule that right to privacy is a part of the right to life and personal liberty. In this case, it was held that right to hold a telephone conversation in the privacy of one's home or office without interference can certainly be claimed as "right to privacy".

Now, one can logically ask this question, if a person can talk whatever he wants over the telephone in the privacy of his or home then why that person should not be allowed to watch pornography in privacy.

Moreover, our constitutional makers drafted the constitution with a desired to create conditions which shall be favorable to the citizen's pursuit of happiness. The Supreme Court in *Govind v. State of Madhya Pradesh*,²⁷² has rightly mentioned the opinion of Judge Brandeis in *Olmstead v. United State*²⁷³ that “the significance of man's spiritual nature, of his feelings and of his intellect and that only a part of the pain, pleasure, satisfaction of life can be found in material things and therefore they must be deemed to have conferred upon the individual as against the government a sphere where he should be left alone.”

Even in the recent PIL filed before the Supreme Court of India in, when court was asked to pass interim order to block porn websites in India, Chief Justice of India H.L. Dattu, on 9th July, 2015 observed orally that “Such interim orders cannot be passed by this court. Somebody may come to the court and say look I am above 18 and how can you stop me from watching it within the four walls of my room. It is a violation of Article 21.”

²⁷⁰ 26 Standford Law Rev. 1161 at 1187.

²⁷¹ AIR 1997 SC 568.

²⁷² Supra 2.

²⁷³ 277 U.S. 438, 471.

According to the procedure established by law:

Article 21 of the Constitution also provides that liberty can be curtailed through the procedure established by law. The law providing for the blocking of porn websites is Section 69A²⁷⁴ of the Information Technology Act, 2000, inserted vide Information Technology (Amendment) Act, 2008. The amended provision limits the power of Government to block these websites only to protect sovereignty and integrity of India, defense of India, security of State, friendly relation with foreign states and public order. The newly introduced provision nowhere talks about banning porn websites on the ground of obscenity.²⁷⁵

The only ground which the Government can use to block the porn websites is public order. Other grounds provided under Section 69A cannot be treated as having connection with porn websites, even remotely.

Public Order:

The Supreme Court of India has dealt with the term ‘public order’ in *Arun Ghosh v. State of West Bengal*²⁷⁶, in the following words:

“Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public

²⁷⁴ **69A. Power to issue directions for blocking for public access of any information through any computer resource.-** (1) Where the Central Government or any of its officer specially authorized by it in this behalf is satisfied that it is necessary or expedient so to do in the interest of sovereignty and integrity of India, defense of India, security of the State, friendly relations with foreign states or public order or for preventing incitement to the commission of any cognizable offence relating to above, it may subject to the provisions of sub-sections (2) for reasons to be recorded in writing, by order direct any agency of the Government or intermediary to block access by the public or cause to be blocked for access by public any information generated, transmitted, received, stored or hosted in any computer resource.

(2) The procedure and safeguards subject to which such blocking for access by the public may be carried out shall be such as may be prescribed.

(3) The intermediary who fails to comply with the direction issued under sub-section (1) shall be punished with an imprisonment for a term which may extend to seven years and also be liable to fine.

²⁷⁵ <http://timesofindia.indiatimes.com/india/Govt-cant-ban-porn-websites-for-obscenity/articleshow/5558110.cms>

²⁷⁶ 1970 CriLJ 1136.

tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order.”

This interpretation of Public Order has also been relied upon in the recent case *Commissioner of Police and Others. Vs. Smt. C. Anita*.²⁷⁷

Now, watching porn cannot create a public order disturbance situation, because of simple reason that whatever a person is watching sitting inside his or her room does not have any effect upon the life of community or does not cause general disturbance of public tranquility.

Thus, porn websites cannot be blocked on the ground that it is in the interest of maintaining public order to block them.

The PIL:

An Indore based Advocate, Kamlesh Vaswani, filed a PIL before the Supreme Court, in 2013, seeking a complete ban on all porn websites. According to him, there is link between watching pornography and crimes against women. When he was asked to give evidence to support his theory Advocate Kamal Vaswani said: “Just look around you and there are evidences.²⁷⁸ Rapes and gang-rapes are happening all over. In some cases, the accused have even accepted watching pornographic film before attacking women.”²⁷⁹

Moreover, he doesn’t believe in any of the international research that contends watching porn and crimes against women aren’t linked. “I do not agree with those research works. Let the court of law decide,” he said.²⁸⁰

With due respect to his intention to stop heinous crimes against women, it is submitted that banning porn websites is not a solution. Moreover, if we go by the logic stated in the PIL, then we have to ban 1,000 other things in the market.

²⁷⁷ AIR 2004 SC 4423.

²⁷⁸ <http://www.hindustantimes.com/india-news/meet-kamlesh-vaswani-the-lawyer-behind-india-s-porn-ban/article1-1376265.aspx>

²⁷⁹ Id.

²⁸⁰ Id.

Suppose if accused in a particular case confessed that he had arousal when he saw a girl coming because he had 3 vodka shots five minutes back. Then, Vodka should also be banned.

Conclusion:

It is very shameful that rape is happening at a devastating rate. Women from every age group are vulnerable to this heinous crime. But, is ban on porn websites really a solution?

You ban 1,000 websites today, 1,000 more will be in operation next the following day. It is hard and almost impossible to control such activities on the web. Moreover, rather than banning porn websites and abridging the right to privacy of people, governments should focus more on other factors like education, poverty, proper enforcement of the laws already in place, etc.

Right to privacy is an asset provided to the citizens by the constitution and government should preserve it rather than limiting it without reasonableness.